

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter referred to as the "Agreement") is made and entered into by and between MATTHEW SCHMITT (hereinafter referred to as "Plaintiff"), and the CITY OF PENSACOLA and ASHTON HAYWARD (which terms shall collectively include all past and present City Council Members, Administrators, managers, employees, consultants, contractors, agents, attorneys, benefit plans, insurers and assigns, representatives, and fiduciaries) (hereinafter referred to as "Defendants" or "City") (hereinafter collectively referred to as "the Parties").

WITNESSETH:

WHEREAS, Plaintiffs filed a civil action against Defendant in the United States District Court for the Northern District of Florida, Pensacola Division, Case Number 3:16-cv-00421-RV-ent (hereinafter referred to as the "Lawsuit"), and in which Plaintiff alleged a claim under 42 U.S.C. Section 1983 concerning his employment with the City;

WHEREAS, Defendants denies Plaintiff's claims in their entirety;

WHEREAS, Defendants in good faith believes that Plaintiff's claims whether stated or unstated, are not valid, has contested the claims, and would continue to contest the claims, and in good faith believes there is a valid foundation for the defense of such claims;

WHEREAS, the Parties desire to avoid incurring further costs of litigation, and seek to resolve all matters in controversy, disputes, and causes of action between them in an amicable fashion and have reached a full and final compromise and settlement of all matters, causes of action, claims and contentions between them; and,

WHEREAS, Plaintiff acknowledges that any payment received pursuant to this Agreement constitutes consideration which he would not otherwise be entitled to receive from Defendants.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and to avoid unnecessary litigation, it is hereby agreed by and between the Parties as follows:

1. **NON-ADMISSION:** This Agreement, and compliance with this Agreement, shall not be construed as an admission by Defendants of any liability whatsoever, and Defendants specifically disclaims any liability to Plaintiff or any other person for all claims asserted by Plaintiff.

2. **SETTLEMENT AND CONSIDERATION:** Plaintiff agrees that he shall take all necessary actions to immediately execute, serve and file all documents and pleadings necessary to dismiss the Lawsuit with prejudice within ten (10) days from receipt of the settlement proceeds set forth in this Paragraph 2.

In full settlement of all claims including attorney's fees and costs, Defendants agree to pay Plaintiff and his attorney one check totaling Two Hundred Seventy-Two Thousand Five Hundred Dollars (\$272,500.00) for which an IRS Form 1099 shall be issued, and which shall be made payable to the Plaintiff's Counsel, Rocco Calamusa, Jr., Esq., as follows: Wiggins Childs Pantazis Fisher & Goldfarb, LLC Trust Account for the benefit Plaintiff, Tax ID No. 74-3118584. Plaintiff agrees to be liable for any and all taxes whether federal, state or local for the proceeds paid in this Paragraph 2.

Defendants will transmit the settlement check to Plaintiff's counsel within fourteen (14) days of Plaintiff's full and complete execution of this Agreement and Defendants counsel's receipt of this Agreement signed by Plaintiff.

The monies paid hereunder include full and final payment for, among other things, any and all attorney's fees and costs incurred by or on behalf of Plaintiff in litigating and resolving his alleged claims by any lawyer, law firm, consultant, witness, expert witness or agent who provided services in connection herewith, including but not limited to those incurred by or owing to Rocco Calamusa, Jr., Esq., or the law firm of Wiggins Childs Pantazis Fisher & Goldfarb, LLC. The Parties agree that it is the responsibility of Plaintiff's Counsel to remit and disburse all sums owed to Plaintiff under the terms of this Agreement.

Plaintiff agrees to waive any statute, rule of court, provision or legal proposition which might otherwise be relied upon to obtain costs, fees, and/or expenses in connection with Plaintiff's allegations and claims released herein. It is understood that neither party is or shall be construed to be the prevailing party with respect to the Lawsuit and the resolution thereof.

It is expressly understood by Plaintiff and his attorney(s) that the obligations of Defendants contained in Paragraph 2 of this Agreement shall be in lieu of any and all amounts to which Plaintiff or his attorney(s) are now, or may become, entitled to, based upon any claim whatsoever arising out of Plaintiff's employment with the City or otherwise, which exist at the time Plaintiff executes this Agreement (including any punitive, special, compensatory, general, treble, or exemplary damages, attorney's fees, interest, expenses, and costs actually incurred).

3. **CONFIDENTIALITY:** The Parties agree that the terms and conditions of this Agreement are public records under Chapter 119, Florida Statutes.

4. **RELEASE:** The Parties intend to effectuate with this Agreement the complete extinguishment of any and all claims, known or unknown, that Plaintiff, his heirs, relatives, representatives and/or guardians (hereinafter "Heirs") may have against Defendants up to and including the date Plaintiff executes this Agreement. Plaintiff hereby unconditionally and irrevocably releases and forever discharges Defendants, including all past and present City Council Members, Administrators, managers, employees, consultants, contractors, agents, insurers and assigns, attorneys, representatives, benefit plans, and fiduciaries, (hereinafter "Defendants" or "Releasees"), of and from, and agrees not to sue and not to assert against them any charges, causes of action, claims and demands whatsoever, at law, in equity, or before any agency or commission of local, state and federal governments, arising, or alleged to have arisen or which might have been alleged to have arisen, or which may arise under any law including, but not limited to, including, but not limited to, claims under the Equal Pay Act of 1963, Title VII of the Civil Rights Act of

1964, as amended, the Civil Rights Act of 1991 (Title VII), the Age Discrimination in Employment Act of 1967, as amended (ADEA), the Older Worker Benefit Protection Act (OWBPA), the Family and Medical Leave Act of 1993, as amended (FMLA), the Americans with Disabilities Act of 1990, as amended (ADA), the Fair Labor Standards Act of 1938, as amended (FLSA), the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA), the Sarbanes-Oxley Act (SOX), the Florida Civil Rights Act (FCRA), Chapter 448, Florida Statutes, Article X, Sec. 24 of the Florida Constitution, the Florida Workers' Compensation Law, Chapter 440, Florida Statutes, the Florida Whistleblower's Act (FWA), Sections 448.101 - 448.105, Florida Statutes, IRS Whistleblower Law, the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, 26 I.R.C. 7623, 25 C.F.R. 301.7623, and all other federal, state, or municipal anti-discrimination laws, Florida Statutes, and the United States and Florida Constitutions, including denial of due process, property or liberty interest rights, or free speech or association, and any statutes and laws of contract and tort or any claim for any adverse actions, failure to report, failure to investigate, negligence, breach of contract, violation of any policy, practice or procedure of Defendants, denial of any benefit, intentional or negligent infliction of emotional distress, defamation or any other claim by Plaintiff for compensatory damages, exemplary damages, punitive damages, damages for pain and suffering or mental anguish, damage to personal reputation, damages related to intentional or negligent infliction of emotional distress, mental anguish, personal injury damages, medical expenses, or damages of any other kind, and attorney's fees and costs that Plaintiff ever had, now has, or which his Heirs, executors, administrators, or assigns, or any of them, hereafter can, shall or may have, based on any set of facts known or unknown, occurring prior to, and including, the date of the execution of this Agreement.

5. MISCELLANEOUS:

- a. **Scope of Agreement.** This Agreement shall accrue to the benefit of and be binding upon the Parties hereto, their respective, Heirs, successor(s), attorney(s), accountant(s), and all other permitted assign(s).
- b. **Acknowledgement of Knowing and Voluntary Waiver:**
 - i. The Parties represent and agree that they have thoroughly discussed all aspects of this Agreement with their respective attorneys and have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily entering into this Agreement.
 - ii. The Parties hereto represent and acknowledge that in executing this Agreement, they do not rely and have not relied on any representation or statement made by any of the Parties or by any of the Parties' agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise other than those specifically stated in this written Agreement.
- c. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties

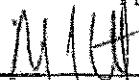
hereto, superseding and replacing all prior negotiations, understandings, representations and agreements, written or oral. No modification, amendment, waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either of the Parties unless confirmed by a written instrument signed by both Parties. No waiver by any party of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

- d. Enforcement and Venue. Any breach of any term, provision, or obligation of this Agreement by any party, shall entitle the other to seek enforcement of such term, provision or obligation in a court of law of competent jurisdiction, and shall entitle the prevailing party to an award of the reasonable attorney's fees and costs incurred in such proceeding. The proper and only venue for any action, based upon any alleged breach of any term, provision or obligation of this Agreement, shall be exclusively in the First Judicial Circuit of Florida in and for Escambia County, Florida.
- e. Severability. If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.
- f. Multiple Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement and may be consummated by facsimile signatures.

6. **ACKNOWLEDGEMENT:** The Parties expressly acknowledge and agree that this Agreement and the payment of the sums provided in Paragraph 2 is contingent upon the entry of an Order from the Court dismissing the Lawsuit with prejudice.

THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, THAT THEY FULLY KNOW, UNDERSTAND AND APPRECIATE ITS CONTENTS, THAT THEY HAVE BEEN ADVISED BY THEIR COUNSEL CONSIDERING ITS CONTENTS, AND THAT THEY EXECUTE THE SAME AND MAKE THE SETTLEMENT AND RELEASES PROVIDED FOR HEREIN VOLUNTARILY AND OF THEIR OWN FREE WILL.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates hereinafter appearing.



"PLAINTIFF"
MATTHEW SCHMITT

September 24, 2018

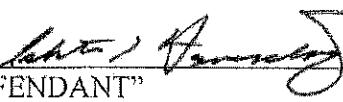
Date



"DEFENDANT"
CITY OF PENSACOLA
(Representative Capacity)

10-16-2018

Date



"DEFENDANT"
ASHTON HAYWARD

10-16-2018

Date

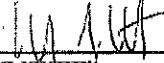
ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE

This addendum is in reference to the SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") by and between Matthew Schmitt ("Plaintiff") and the City of Pensacola and Ashton Hayward, individually (which terms shall collectively include all past and present Mayors, City Council Members, Administrators, managers, employees, consultants, contractors, agents, attorneys, benefit plans, insurers and assigns, representatives, and fiduciaries) (hereinafter referred to as "Defendants"), regarding a civil action in the United States District Court for the Northern District of Florida, Pensacola Division, Case Number 3:16-cv-00421-RV-EMT.

In Paragraph 4, the "Releasees" are defined as follows: The CITY OF PENSACOLA and ASHTON HAYWARD, including all past and present Mayors, City Council Members, Administrators, managers, employees, consultants, contractors, agents, insurers and assigns, attorneys, representatives, benefit plans, and fiduciaries.

The Parties agree that Plaintiff can represent that he resigned from his employment with the City. Plaintiff agrees that he will not apply for employment with the City in the future, and Plaintiff agrees that in the event he applies for employment with the City in the future his application will not be considered.

No other terms or conditions of the above-mentioned Agreement shall be negated or changed as a result of this addendum.



"PLAINTIFF"

OCT 15, 2018
Date

MATTHEW SCHMITT



"DEFENDANT"

10-16-2018
Date

CITY OF PENSACOLA
(Representative Capacity)



"DEFENDANT"

10-16-2018
Date

ASHTON HAYWARD

